

among those portions of the life of operations in which surface coal mining operations occurred—

(1) Prior to August 3, 1977;  
(2) After August 3, 1977, and prior to either—

(i) May 3, 1978; or

(ii) In the case of an applicant or operator which obtained a small operator's exemption in accordance with § 710.12 of this chapter, January 1, 1979;

(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the applicable regulatory program;

(4) After the estimated date of issuance of a permit by the regulatory authority under the approved regulatory program.

#### § 777.15 Completeness.

An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum—

(a) For surface mining activities, the information required under parts 778, 779, and 780 of this chapter, and, as applicable to the operation, part 785 of this chapter; and

(b) For underground mining activities, the information required under parts 778, 783, and 784 of this chapter, and, as applicable to the operation, part 785 of this chapter.

#### § 777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. The fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit.

### PART 778—PERMIT APPLICATIONS— MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

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AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended and Pub. L. 100-34.

SOURCE: 48 FR 44399, Sept. 28, 1983, unless otherwise noted.

#### § 778.1 Scope and purpose.

This part establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This part covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This part applies to any person who submits an application to a regulatory authority for a permit to conduct surface coal mining and reclamation operations.

#### § 778.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. Section 507(b) of SMCRA provides that persons applying for a permit to conduct surface coal mining operations must submit to the regulatory authority certain information regarding the applicant and affiliated entities, their compliance status and history, property ownership and other property rights, right of entry, liability insurance, the status of unsuitability claims, and proof of publication of a newspaper notice. The regulatory authority uses this information to insure that all legal, financial and compliance requirements are satisfied prior to issuance of a permit. Persons seeking to conduct surface coal mining operations must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB clearance number for this part is 1029-0034.

(b) OSM estimates that the public reporting and recordkeeping burden for

this part averages 48 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection and record-keeping requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, NW., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Please refer to OMB Control Number 1029–0034 in any correspondence.

[62 FR 19459, Apr. 21, 1997]

#### § 778.13 Identification of interests.

An application must contain the following information, except that the submission of a social security number is voluntary:

(a) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(b) The name, address, telephone number, and, as applicable, social security number and employer identification number of the:

- (1) Applicant;
- (2) Applicant's resident agent; and
- (3) Person who will pay the abandoned mine land reclamation fee.

(c) For each person who owns or controls the applicant under the definition of *Owned or controlled* and *owns or controls* in § 773.5 of this chapter, as applicable:

- (1) The person's name, address, social security number, and employer identification number;
- (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure; and
- (3) The title of the person's position, the date that the person assumed the position, and, when submitted under § 773.17(h) of this chapter, the date of departure from the position.

(d) For the applicant and each partner or principal shareholder of the applicant, each name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of the application.

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the applicant in any State in the United States.

(f) For any surface coal mining operation owned or controlled by the applicant under the definition of *Owned or controlled* and *owns or controls* in § 773.5 of this chapter, the operation's:

(1) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(g) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(h) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(i) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(j) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this paragraph which is not on public file pursuant to State law must be held in confidence by the

regulatory authority, as provided under § 773.13(d)(3)(ii) of this chapter.

(k) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant must, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (f) of this section.

(l) The applicant must submit the information required by this section and by § 778.14 of this part in any format that OSM prescribes.

[62 FR 19460, Apr. 21, 1997]

#### § 778.14 Violation information

Each application must contain the following information:

(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(1) Had a Federal or State coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond.

(b) A brief explanation of the facts involved in any such suspension, revocation, or forfeiture referred to in paragraphs (a)(1) and (a)(2) of this section has occurred, including:

(1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) The current status of the proceedings.

(c) A list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or

controlled by the applicant under the definition of *Owned or controlled* and *owns or controls* in § 773.5 of this chapter. For each notice of violation issued pursuant to § 843.12 of this chapter or under a Federal or State program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list must include the following information, as applicable:

(1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

(2) A brief description of the violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in paragraph (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation.

(d) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant must, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

[62 FR 19460, Apr. 21, 1997]

#### § 778.15 Right-of-entry information.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to

which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit—

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

**§ 778.16 Status of unsuitability claims.**

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in § 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application in which the applicant proposes to conduct surface coal mining activities within 300 feet of an occupied dwelling or within 100 feet of a public road shall contain the necessary information and meet the requirements of § 761.12 of this chapter.

**§ 778.17 Permit term.**

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of

acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall—

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

**§ 778.18 Insurance.**

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with § 800.60 of this chapter.

**§ 778.21 Proof of publication.**

A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by § 773.13(a)(1) of this chapter.

**§ 778.22 Facilities or structures used in common.**

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility

or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.

## **PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

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AUTHORITY: 30 U.S.C. 1201 *et seq.*; sec. 115 of Pub. L. 98-146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

SOURCE: 44 FR 15354, Mar. 13, 1979, unless otherwise noted.

### **§ 779.1 Scope.**

This part establishes the minimum requirements for the Secretary's approval of regulatory program provisions for the environmental resources contents of applications for surface mining activities.

### **§ 779.2 Objectives.**

The objectives of this part are to ensure that each application provides to the regulatory authority a complete and accurate description of the environmental resources that may be impacted or affected by proposed surface mining activities.

### **§ 779.4 Responsibilities.**

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this part, all information required by this part in the application.

(b) It is the responsibility of State and Federal government agencies to provide information for applications as specifically required by this part.

### **§ 779.10 Information collection.**

The information collection requirements contained in 30 CFR 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.21, 779.22, 779.24, 779.25 and 779.27 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0035. The information is being collected to meet the requirements of sections 507 and 508 of Pub. L. 95-87, which require the applicant to present an adequate description of the existing pre-mining environmental resources within and around the proposed mine plan area. This information will be used by the regulatory authority to determine whether the applicant can comply with the performance standards of the regulations for surface coal mining and whether reclamation of these areas is feasible. The obligation to respond is mandatory.

[47 FR 33686, Aug. 4, 1982, as amended at 52 FR 47359, Dec. 11, 1987]

### **§ 779.11 General requirements.**

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

[44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

### **§ 779.12 General environmental resources information.**

Each application shall describe and identify—

(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

(b)(1) The nature of cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the State Historic